SECTION 1.0
PURPOSE AND NEED

1.0 PURPOSE AND NEED

1.1 INTRODUCTION

This Environmental Impact Statement (EIS) addresses the potential beneficial and adverse effects of the proposed completion of a 14-mile Border Infrastructure System in San Diego County, California (Figure 1-1). The U.S. Immigration and Naturalization Service (INS) and its enforcement branch, the U.S. Border Patrol (USBP), are planning the Border Infrastructure System for construction. This EIS has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, the President's Council on Environmental Quality's (CEQ) Regulations for the Implementation of NEPA, INS Regulations for the Implementation of NEPA (28 Code of Federal Regulation [CFR], Part 61), and numerous other Federal and state environmental regulations and Executive Orders (EO). This EIS is tiered from the *Supplemental Programmatic EIS for INS and Joint Task Force Six (JTF-6) Activities along the U.S./Mexico Border* (INS 2001).

1.2 BACKGROUND AND HISTORY

The INS and the USBP are charged with the responsibility of protecting the sovereign borders of the United States. The INS has reported that the U.S./Mexico border is breached more than any other international border in the world. It is a large, diverse and difficult boundary to effectively enforce without the use of a complex infrastructure (i.e., fences, lights, roads, and cameras). In spite of stepped-up enforcement efforts, national statistics show a dramatic rise in the number of apprehensions made throughout the southwest border: from 979,101 in 1992 to nearly 1.6 million in 1999 (USBP 2000). The INS estimates that there are currently seven to nine million illegal aliens in the United States, although some studies have indicated that this figure is probably closer to 10 million. Since the terrorist attacks of September 11, 2001, even greater importance has been placed on securing the Nation's borders.

Until the early 1990s, there was limited awareness of the southwest border issues and little national attention was given to illegal trans-boundary activity. As a result, the USBP's growth was nominal, funding for enforcement efforts fell short, and the USBP was forced to function under severe constraints. Recent events related to illegal immigration and narcotics smuggling have increased the Nation's awareness and generated substantial interest in controlling the southwest border. National concern has led to increased funding and staffing and has created new opportunities in the development of proactive border control strategies, as demonstrated in patrol and enforcement operations throughout the southwest border area (e.g., Operations Gatekeeper, Hold-the-Line, Safeguard, and Rio Grande).

Enforcement strategy predating such operations was more reactive in nature and diminished the importance of a formidable infrastructure along the U.S./Mexico border because little emphasis was placed on deterring illegal crossings. Rather, the USBP's efforts focused singularly upon apprehensions once the international boundary was breached. This strategy utilized the "element of surprise" by deploying limited resources away from the international boundary in concealed positions. However, as illicit trafficking increased, so did the area required to be patrolled by USBP, thus spreading the USBP's enforcement resources thinner yet. Furthermore, this increased the geographic footprint and subsequent environmental impacts of both smuggler and USBP activities.

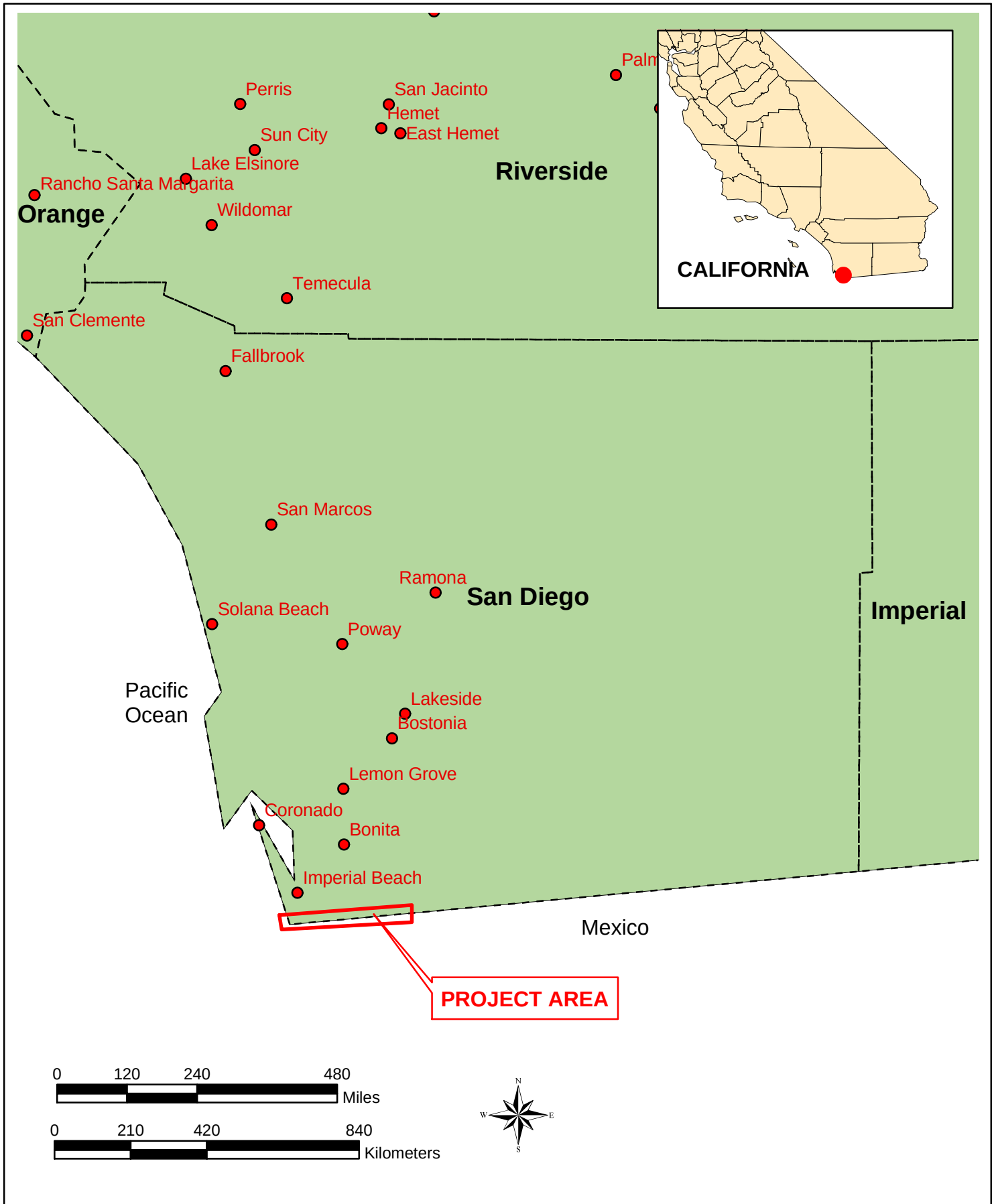

Figure 1-1. Project Vicinity

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Date: May 2003

As national attention increased, funding, political support, and resources also increased, enabling the USBP to begin to develop a proactive deterrent strategy designed foremost to prevent illegal entry. This strategy combines the use of a more complex border infrastructure (e.g., roads, lights, fencing) and manpower. Initial efforts to augment operations with such infrastructure yielded promising results, effectively hindering illegal border traffic. In 1993, the installation of the primary border fence along a 14-mile stretch of border separating Tijuana, Baja California, Mexico from San Diego, California, significantly assisted the USBP's efforts in deterring smuggling attempts via drive-throughs using automobiles and motorcycles. This project was addressed in the February 1993 *Final Environmental Assessment (EA) for the JTF-6 Border Fence Construction Project, San Diego, California* (USACE 1993).

Although no statistics were collected at the time, USBP sources indicate that, on the average, more than 200 drive-through attempts occurred daily throughout the 1980s and early 1990s. The prevalence of such activity was a testimony to several factors: a border easily crossed; ready access to highway systems leading north; too few agents; and the belief among aliens and smugglers that such an effort would prove fruitful. Prior to construction of the fence, high-speed pursuits often occurred because many drive-throughs made it to the adjacent freeways that were readily accessible, as illustrated in Figure 1-2.

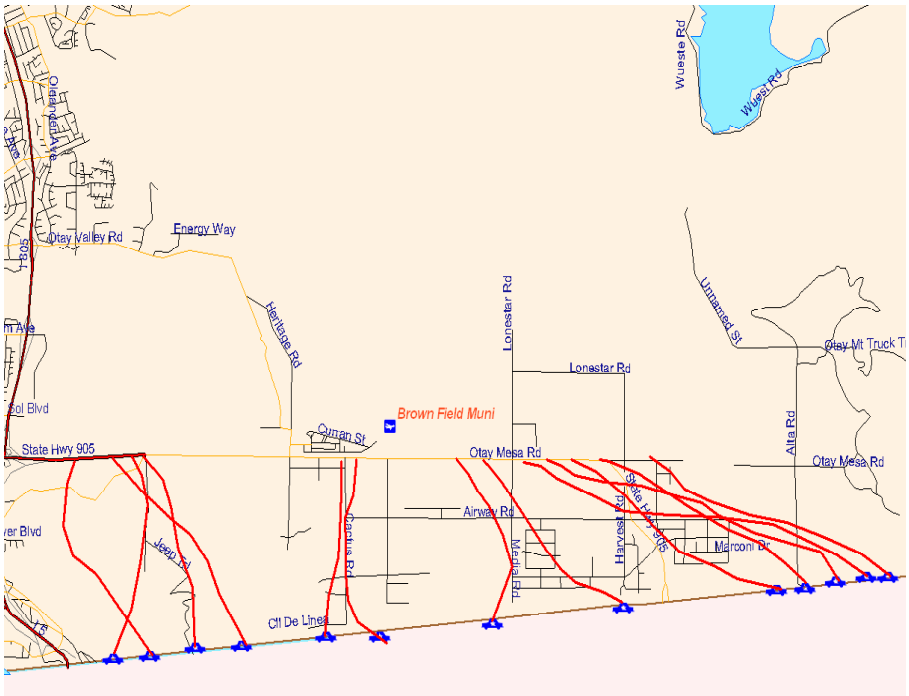

Figure 1-2. Major Access Routes Used by Illegal Immigrants and Smugglers

After construction of the primary fence was completed, the frequency per month of drive-through attempts dropped into the single digit range and for extended time periods, the USBP experienced no drive-through attempts. The reduction in drive-through attempts was the direct result of combining the deterrence factor of the primary fence and Operation Gatekeeper: a manpower intensive initiative meant to restore the sovereignty of the San Diego Sector's border region. It is important to note that using the fence in this manner not only substantially reduced the drive-through problem; it also reduced the enforcement footprint previously necessary to arrest violators.

At Operation Gatekeeper's inception in October 1994, national USBP staffing levels were approximately 4,140 agents—30 percent of which (1,272) were permanently stationed in the San Diego Sector. The San Diego Sector is responsible for patrolling only 66 miles of the approximately 2,000 miles of the U.S./Mexico boundary, but historically has intercepted over 40 percent of the illegal migrants crossing the border. The Imperial Beach and Chula Vista stations of the San Diego Sector, covering the first seven miles of border east of the Pacific Ocean, have been responsible for over 60 percent of the apprehensions made by the Sector. When combined with the Brown Field Station (which patrols the next seven miles of border), the three stations accounted for over 81 percent of the sector apprehensions with only 68 percent of the sector's agents.

At the height of Operation Gatekeeper, management at the Imperial Beach Station routinely deployed upward of 100 agents per 8-hour shift (a level 100 percent above the current deployment level), including assigned station personnel as well as agents that were temporarily detailed to the San Diego Sector from other USBP sectors nationwide. The agents were stationed within an area of border approximately five miles wide in a three-tier configuration, each tier paralleling the border at a specified distance north of the previous tier. After nearly a year and a half of Operation Gatekeeper's intensified effort, apprehensions on average began to drop dramatically.

While the success of Operation Gatekeeper is indisputable, its geographic footprint within the 14-mile border segment was quite large. Building the primary fence as a response to a crisis, with limited resources, resulted in the smugglers exerting undue influence over the geographic footprint and size of the operation. As undocumented aliens (UDAs) and smugglers breached the primary fence and attempted to allude detection and apprehension, USBP agents were forced to chase the illegal entrants into environmentally sensitive areas such as the Tijuana estuary, East Otay Mesa, Spring Canyon, and into residential areas of Imperial Beach, Brown Field and Chula Vista. This was primarily due to the lack of infrastructure that would have allowed the USBP to control the problem at the immediate border and within a substantially smaller footprint. This large enforcement footprint not only created greater impacts on the environment, but it also continues to negatively affect the efficiency of operations by requiring an inordinate number of agents to secure the border. According to the Imperial Beach Station's Intelligence Unit, the following operational impacts resulted from the increased manpower requirements:

- Closure of the San Clemente checkpoint for an extended period of time;
- The reassignment of the Anti-Smuggling Unit (ASU) in its entirety for the first few weeks of Operation Gatekeeper;
- The assignment of the entire San Diego Sector Horse Patrol to a 5-mile section of border;
- The assignment of all all-terrain vehicle (ATV) units from within the Sector to a 5-mile segment of border; and
- Agents from other USBP sectors throughout the United States were temporarily assigned to the San Diego Sector.

Although Operation Gatekeeper was very successful, it was extremely labor intensive and costly. It highlighted the deterrence capability of combining infrastructure and operation strategies. Congress recognized this proactive enforcement strategy when it enacted the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Title 1, Subtitle A, Section 102 of the Act states that the Attorney General, in consultation with the Commissioner of INS, "…shall take such actions as may be necessary to install additional physical barriers and roads in the vicinity of the U.S. border to deter illegal crossings in areas of high illegal entry into the U.S." (Section 102(b)). More specifically, Subsection B states the Attorney General "…shall provide for the construction along the 14

miles of the international land border of the United States, starting at the Pacific Ocean and extending eastward, of second and third fences, in addition to the existing reinforced fence, and for roads between the fences." A copy of Title I of IIRIRA is presented in Appendix A.

In response to this Congressional mandate and to the need to further control the border region, the San Diego Sector began plans to implement an enforcement zone that included a multi-tiered fence, patrol road, maintenance road, and various technologies such as lighting, sensors, and remote video surveillance (RVS) systems. Because of a lack of funding and the fact that the enforcement zone was the first of its kind, the initial segments of the 14-mile system were implemented as pilot projects. These projects were addressed in site-specific NEPA documents as prototypical portions of the overall 14-mile Border Infrastructure System. The potential construction of various fences, roads, lights, and other infrastructures were addressed in the 1994 Programmatic EIS for INS and JTF-6 activities along the U.S./Mexico border (USACE 1994). The previous site-specific EA's prepared include:

- *Record of Environmental Consideration (REC), Multi-tiered Pilot Fence Project (Phase I),* October 1996. This REC provided the first assessment of a small portion of the Border Infrastructure System as a pilot project near the International Boundary and Water Commission's wastewater treatment plant.

- *Final EA for the INS Multi-Tiered Pilot Fencing Project (Phases IA and II),* April 1997. This EA addressed the installation of fencing within small portions of the Imperial Beach and Chula Vista USBP stations.

- *Final EA for Area Lighting, Fencing, and Roadways at International Border, San Diego, California,* August 1997. This EA summarized the environmental impacts associated with implementing a combined lighting, fencing, and roadway system along the U.S./Mexico border from Arnie's Point (approximately seven miles east of the Pacific Ocean) to the San Ysidro Mountains.

- *Revised Final EA for Construction of Barrier Systems along a 1.6-Mile Corridor of the U.S. Mexico International Boundary (Spring Canyon),* July 1998. This EA assessed the environmental impacts associated with proposed infrastructure improvements from Arnie's Point east to San Ysidro Port-of-Entry (POE).

Although many names have been used for this project from its inception as a pilot project to present, the official name is *San Diego 14-Mile Border Infrastructure System*.

The overall project area (14-mile corridor from the Pacific Ocean inland to the eastern slope of Tin Can Hill) is divided into six sub-areas for purposes of management and evaluation, as depicted in Figure 1-3. The complex infrastructure construction that was addressed in the NEPA documents presented above has either been completed or is currently in progress for approximately nine miles of the 14-mile system (Areas II, III, and IV). The coordinates for the boundaries of each of the sub-areas are shown in Table 1-1.

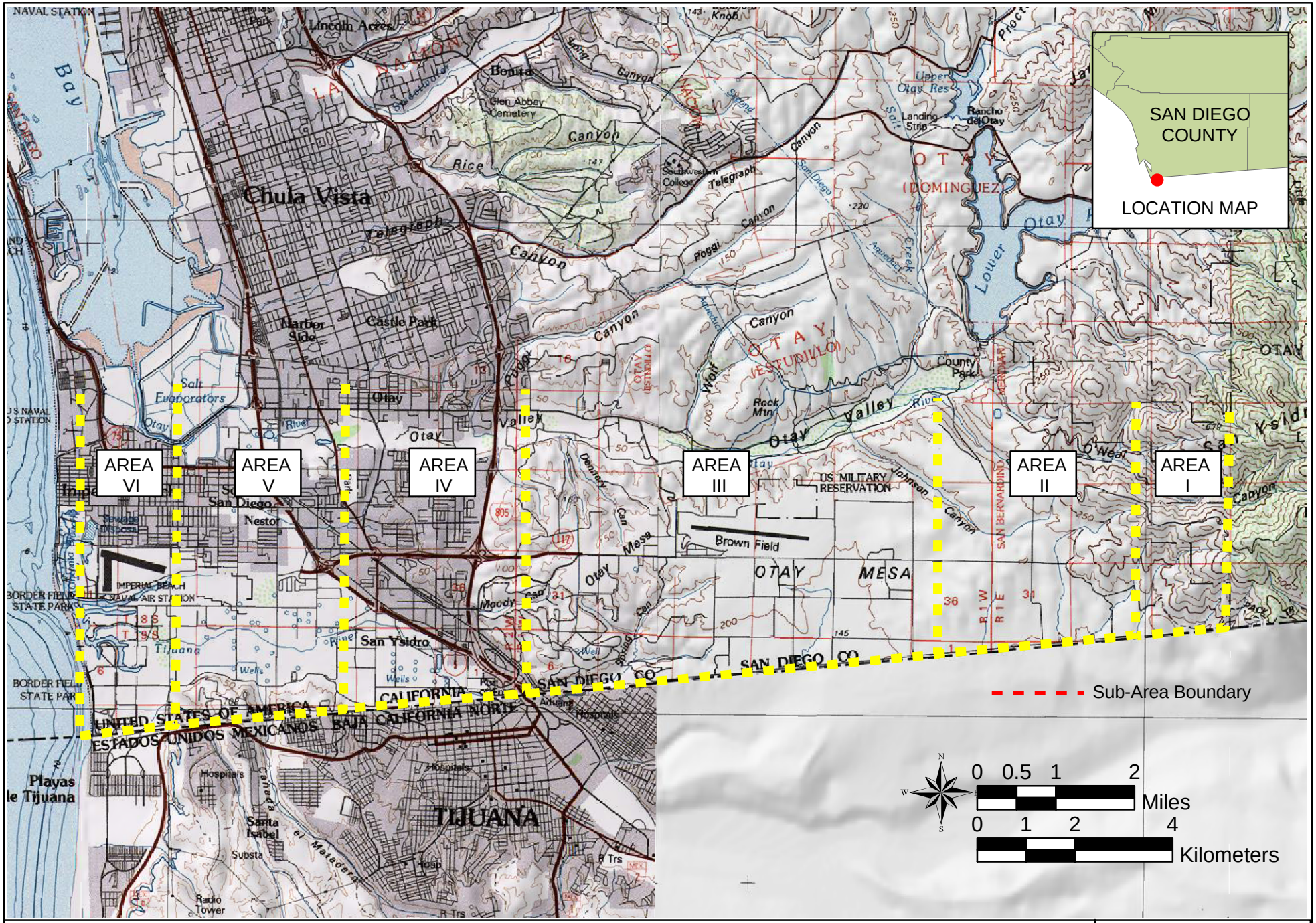

Figure 1-3. Six Sub-Areas of Project

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Date: July 2003

Table 1-1. Boundary Coordinates for each Sub-Area

Area	East		West	
	Latitude	Longitude	Latitude	Longitude
Area I	32:33:19	116:52:37	32:33:14	116:53:47
Area II	32:33:14	116:53:47	32:33:01	116:56:14
Area III	32:33:00	116:56:27	32:32:34	117:01:36
Area IV	32:32:32	117:01:50	32:32:21	117:04:09
Area V	32:32:21	117:04:09	32:32:11	117:06:08
Area VI	32:32:09	117:06:28	32:32:04	117:07:25

Initial success has already been realized in these general areas. A 1-mile segment of the proposed infrastructure system was completed in early 1999 from the Otay Mesa POE to La Media Road (Area III). Prior to its construction, the USBP was charged with a virtually impossible control mandate in an area that proved tremendously advantageous to smugglers.

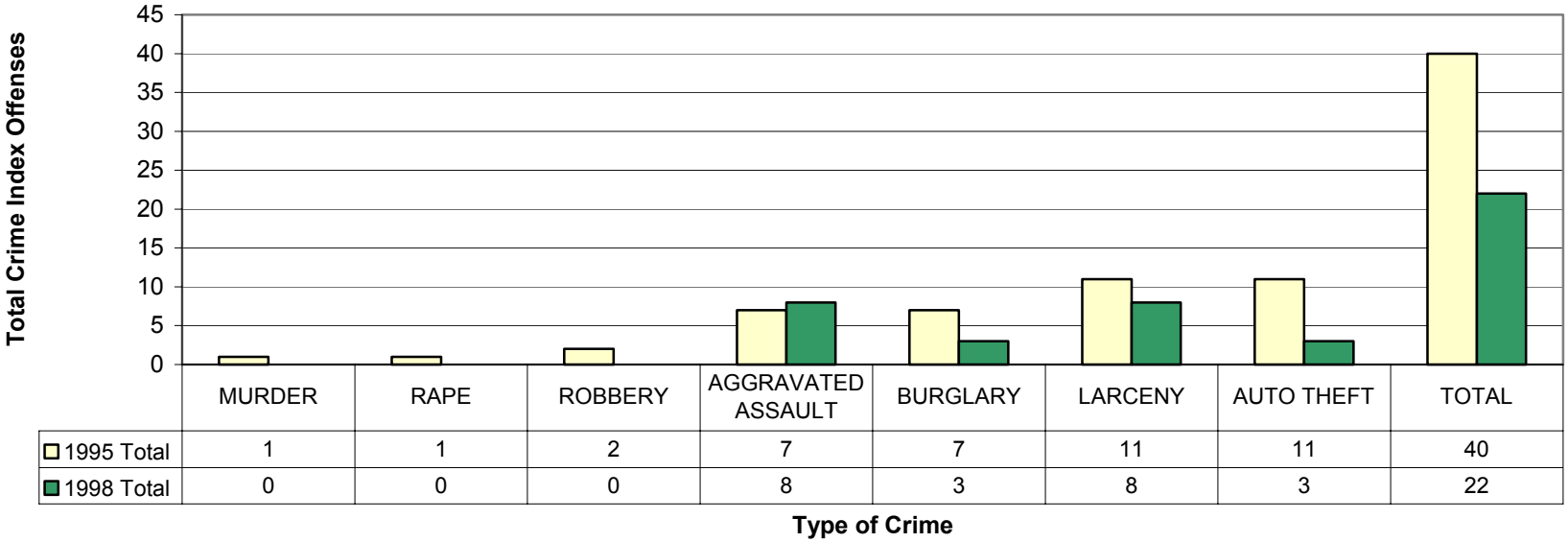
Industrial development had encroached on the immediate border and smugglers were able to easily use this area for concealment and escape. The resulting enforcement effort was intense, ineffective, and intrusive upon the industrial complex. This area was known as one of the most problematic areas in the 14-mile stretch of border, and the USBP saw no significant decrease in activity until the 1-mile segment was completed. Just as with the primary fence discussed earlier, this infrastructure system was successful because it properly augmented personnel resources with infrastructure. This negated the elements that made the area desirable to traffickers, and simultaneously communicated to the smugglers a certainty of detection and apprehension.

Today the USBP reports that staffing is now more balanced with the requirements of current levels of border activity. This has resulted in a reduced enforcement footprint, increased security for the industrial park, and other developed areas in Areas II, III, and IV, and a safe working environment for its employees. Figure 1-4 demonstrates the reduction in crimes within Area IV after the completion of the secondary fence. As can be seen from this figure, total crime dropped by about 45 percent. Violent crimes, in particular murder, rape, and robbery, have been eliminated. However, if illegal border activity rates rise in the future, staffing will again be inadequate. Figure 1-5 illustrates not only the reduction in assaults on USBP agents within the San Diego Sector since the implementation of the Border Infrastructure System project, but also that assaults are still a problem. In fact, since 2001 USBP agents from Imperial Beach Station, where the Border Infrastructure System has not been completed, have experienced a 17 percent increase in assaults. Without completion of the Border Infrastructure System, these assaults will continue and perhaps increase.

1.3 PURPOSE AND NEED FOR THE PROJECT

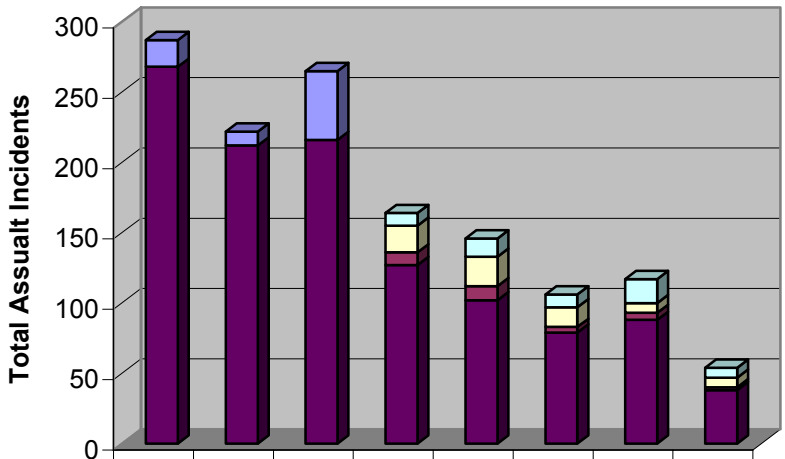
As indicated in the previous section, the USBP has significantly increased its emphasis on deterrence during recent years. However, developing trends such as the continued urbanization and industrialization of the immediate border, the recognition of environmental preservation concerns, and the increase of criminal trans-boundary activity (including trafficking in people and drugs), continues to pose a challenge. The U.S. Congress acknowledged this continuing problem and, in 1996, passed the IIRIRA. This Act, which is described in more detail in Section 1.4.2, mandated the construction of a Border Infrastructure System starting at the Pacific Ocean and extending 14 miles inland. The infrastructure system directed by IIRIRA was to include multiple fences, roads, lights, other

Figure 1-4.
Tijuana River Valley Crime Offenses Before and After Construction of the Secondary Fence



	MURDER	RAPE	ROBBERY	AGGRAVATED ASSAULT	BURGLARY	LARCENY	AUTO THEFT	TOTAL
1995 Total	1	1	2	7	7	11	11	40
1998 Total	0	0	0	8	3	8	3	22

Figure 1-5.
San Diego Sector Assaults on Border Patrol Agents
FY-96 - FY-03



Year	FY-96	FY-97	FY-98	FY-99	FY-00	FY-01	FY-02	FY-03 (Oct-Feb)
Weapons				9	13	9	17	7
Physical				19	21	14	7	7
Vehicular				9	10	4	5	2
Unspecified	19	10	49					
Rockings	268	212	216	127	102	79	88	38

technology, and the removal of barriers and obstacles that could impede the successful operation of the system.

In addition to the requirement to comply with IIRIRA, the need for the proposed action, therefore, is to halt the continual influx of illegal aliens and smugglers into the San Diego area by effecting a permanent deterrence through a certainty of detection and apprehension. Another need is to reduce the current enforcement footprint that will ensure a more efficient and effective control of the border region. The purpose and objectives of the proposed action is to provide for integration of infrastructure and technology into the current strategy for border control. This will maximize the proactive, deterrent enforcement capability of the USBP while gaining the necessary and desired permanent status of deterrence. The following paragraphs provide further elaboration of the purpose and needs of the proposed action.

Localized efforts have had some success in deterring smugglers from utilizing traditional entry corridors. However, these efforts have the potential to degrade the general environment, because they depend largely upon a massive influx of personnel and equipment. This results in short term successes of the operation because no other physical barriers or deterrence factors are in place and the cover and concealment (e.g., dense brush, houses, close transportation routes) that initially made the area attractive to illegal

border crossings are still present. When the problem returns, so must the vast influx of personnel resources, thus repeating the entire cycle.

The USBP and INS are part of a national focus on border politics in which an effective and permanent solution to the illegal immigration and drug trafficking problem along the southwest border is sought. As mentioned previously, the goal of this project is to integrate infrastructure and technology into the current enforcement strategy to maximize the potential achievement of permanent deterrence. This will in turn provide the necessary flexibility in personnel deployment. Once permanent deterrence is achieved, the protection or preservation of urbanization needs, industrialization needs, and environmental resources will be realized.

In developing a plan to control the border region within San Diego County, the USBP comprehensively gauged the requirements for supportive infrastructure and technology, and devised a strategy that effectively integrates infrastructure components into a border-wide, proactive, operational profile predicated on deterrence and flexibility. The effort recognizes that infrastructure, as well as the need to plan and deploy it, as a system of interdependent components, is a necessity to a permanent and lower-impact border control solution. This solution has drawn upon a number of resources for direction, including:

- The Attorney General's strategy for strengthening the southwest border;
- Previous Government Accounting Office reports (1997 through 2000) on illegal immigration; and
- The USBP's 1994 Strategic Plan.

In addition, the plan also uses knowledge gained through other established/successful infrastructure efforts elsewhere in the southwest that have proven to foster control.

As outlined in the Attorney General's strategy, the USBP is required to address four designated criteria in strengthening the border: (1) allocate additional USBP resources to areas of highest known illegal activity; (2) make maximum use of physical barriers; (3) increase the proportion of time USBP agents spend on border enforcement activities; and (4) identify the appropriate mix of technology, equipment, and personnel needed to allow the USBP to establish and maintain control of the southwest border. This project establishes the foundation to target each criterion and determine how each will be affected or addressed.

In addition to providing a foundation, the proposed action coordinates infrastructure components throughout a three-station area under a common strategy and implementation plan. Whereas most local infrastructure planning initiatives have been limited in scope and effectiveness by a lack of funding and support resources, this undertaking enables the USBP to properly plan and coordinate interdependent infrastructure components (roads, lights, fencing, and cameras) comprehensively, simultaneously, and efficiently as a working system. The purpose of this Border Infrastructure System is to lessen the overall impact of the enforcement footprint, maximize the deterrent enforcement profile, and safeguard local neighborhoods, businesses, and environmental resources.

Although the primary fence was successful in deterring drive-throughs, as discussed in Section 1.2, it did little to stop the flow of illegal pedestrians across the border. Its deficiency in this respect magnified the need to comprehensively plan an infrastructure project as a system (in consideration of all enforcement challenges) that included all necessary components (i.e., lights, RVS, and roads). Such comprehensive planning would maximize operational effectiveness and fulfill the USBP's greater mandate of controlling all illegal entries, regardless of the *modus operandi*.

Research conducted by the Archos Corporation (1999) provided evidence that augmenting an increase in border enforcement hours with border infrastructure

improvements significantly enhances the current USBP operational strategy. Concerning the Imperial Beach, Chula Vista, and Brown Field USBP stations in the San Diego Sector, the study found that:

"…The combination of increased numbers of agents and completion of border infrastructure improvements has resulted in significant decreases in apprehensions."

The study further reported that despite an increase in border enforcement hours of nearly 300 percent in the El Centro, Yuma, and Tucson sectors, apprehensions climbed from 61,700 to over 722,000 during the same period. The research concluded in part that for these three sectors, *"Deterrence has not been achieved…"* and that *"…Manpower increases alone, without significant border infrastructure changes seem to have little effect."*

Additional evidence supporting a "systems" approach was recently outlined in a study conducted by the U.S. Army Corps of Engineers, Construction and Engineering Research Laboratory (1999). This study concluded, in part:

> *"Based upon the findings of this investigation it is concluded that Department of Defense (DoD) - funded counter-drug fencing projects have been very effective at deterring the flow of illegal drugs and illegal immigrants. An analysis of interdiction and apprehension statistics showed other beneficial trends correlating with the construction of DoD counter-drug fencing, such as a significant decrease in local urban crime."*
>
> *"It is also concluded that a 'systems' approach to barrier fencing offers* ***strong benefits over a single fence*** [emphasis is added]. *One important benefit is that a more effective barrier system allows the USBP to more efficiently and strategically deploy its agents..."*

Unless properly designed infrastructure "systems" provide rigid boundaries, deterrence-based operations will undoubtedly have a larger than necessary footprint because they will continue to rely on personnel deployments that saturate environments with various patrol resources (including ATV's, horse patrols, 4x4 vehicles, helicopters, infrared scope trucks, and foot patrols) whenever those locations are targeted by smugglers.

For example, the enforcement footprint for the area extending from the Pacific Ocean to about two miles east of the San Ysidro POE has historically encompassed a corridor that is about six miles wide (or about 30 square miles). Figure 1-6 illustrates the primary entry routes in this area and the required enforcement zone. Apprehensions in this area in the mid-1990s represented nearly 30 percent of total arrests nationwide. Illegal entries have been estimated to average as high as 1,750 per night. The Imperial Beach Station estimates that they were successful in apprehending only one out of every three to seven illegal aliens or smugglers due to the terrain, major transportation routes, and concealment opportunities favoring their escape.

Driven by the high illegal traffic, the USBP had to maintain a road network that provided quick access to traditional illegal entry corridors. Many of the roads began as trails worn by illegal entrants and soon the network required to apprehend the illegal aliens developed into a series of hundreds of miles of unimproved roads. Trails and roads, however, are not the only impact illicit-trafficking has had on the local environment. Illegal entrants have destroyed habitat by cutting vegetation for shelter and fire, by causing accidental wildfires, by increasing erosion through repeated use of trails, and by discarding trash upon entry to the United States. Photographs 1-1 through 1-4 illustrate some of the environmental impacts created by the illegal aliens within the Imperial Beach Station's area of operation.

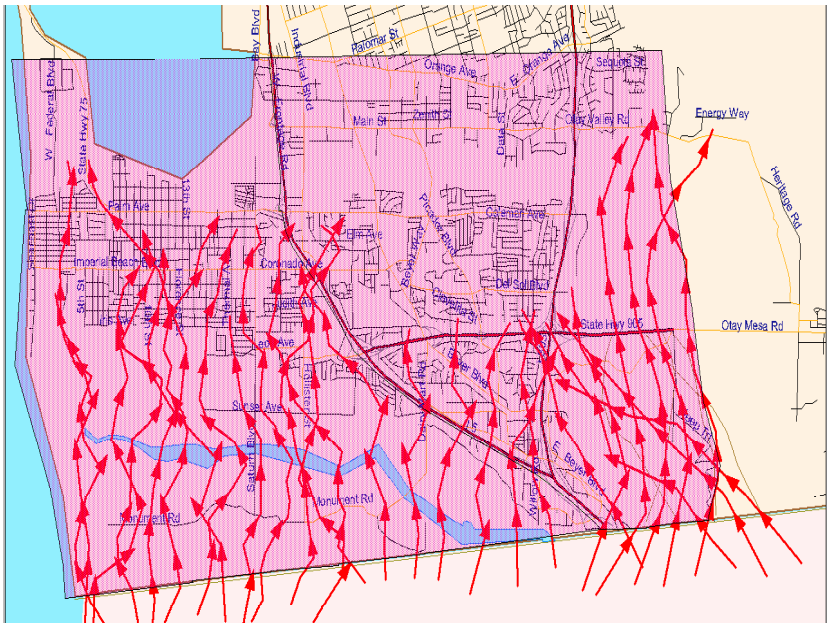


Figure 1-6. Primary Routes of Entry into U.S. and Current Enforcement Footprint

It is also significant to note that from 1989 to 1996 there was an average of 20 fires per year within the boundaries of the Tijuana Estuary, with the greatest number occurring between 1993 and 1995. This correlates directly to higher illegal traffic levels. Upon completion of the primary fence and implementation of Operation Gatekeeper, the frequency of fires also fell, as depicted in Figure 1-7.

The creation of a primary enforcement zone composed of a dedicated system of infrastructure (multi-tiered fencing, lighting, cameras, and an all-weather road) that closely, but at a safe distance, parallels the border, reduces the geographic footprint of the operation and the environmental impact. It further enhances control efforts and provides opportunities to balance the overall operation by mitigating intensive manpower requirements. It thereby increases flexibility in personnel deployment and maximizes the USBP's deterrent, proactive enforcement capability.

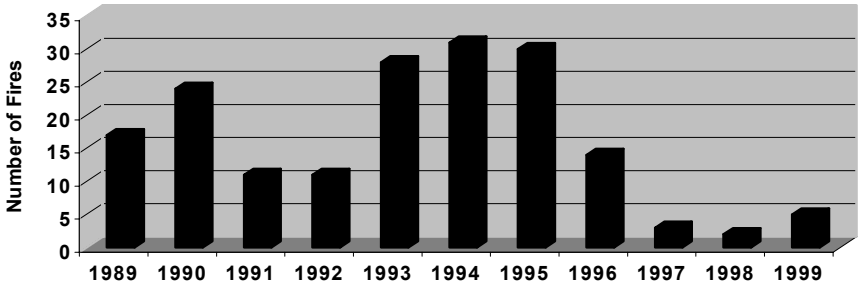


Figure 1-7. Fires within the Tijuana Estuary (1989-1999)

Photo 1-1. Baja California birdbush hewed out by illegal aliens and utilized for cover from searching agents.

Photo 1-2. Trash left behind by smuggled aliens.

Photo 1-3. Trails worn by smuggled aliens in the Tijuana Estuary's salt marsh.

Photo 1-4. Convergence of several trails in the hills of the Tijuana River Valley Regional Park.

Completing the proposed Border Infrastructure System project will also allow the USBP to establish a permanent footprint for enforcement operations. Rapidly developing interests, such as urbanization, industrialization, and environmental preservation along the immediate border need to be balanced with the USBP's need to present an effective deterrent profile and effectively secure the immediate border area.

The completion of the Border Infrastructure System in Areas I, V, and VI would empower the USBP to fully engage the proactive enforcement approach. Maintaining the status quo would allow the smugglers to continue to illegally breach the border. The completion of the Border Infrastructure System would create an opportunity for USBP agents to gain an advantage over smugglers who exploit the U.S./Mexico border. A secure infrastructure system would establish a safe and solid foundation for the continued development of neighborhoods, businesses, parks, and environmental preserves. This strategy is the bedrock for the future of illegal immigration control. It is a strategy emphasizing flexibility that is formulated upon *a state of deterrence achieved through a well-communicated certainty of detection and apprehension*. This EIS, therefore, addresses the completion of the 14-mile Border Infrastructure System.

Continued infrastructure development will result in returning the rule of law to the previously lawless border. Improving the border barrier infrastructure, both preceding and following the 1994 onset of Operation Gatekeeper, contributed to a marked decline in serious crimes along the border. The construction of primary fencing from 1991 through 1993 paralleled a 23 percent reduction in border crimes. As primary fencing was completed and secondary fencing was begun from 1996 through 1998, a further reduction of 45 percent was achieved. In 1997, San Diego District Attorney Paul Pfingst commented on the reduced border crime by saying . . . "that tells us that border enforcement is reducing crime." During this period, an Assistant Chief of the San Diego Police Department indicated that Operation Gatekeeper was a major factor in reducing border area crime. Furthermore, he reported there had been such a significant decrease in border crime that the San Diego Police Department had deployed some of its officers to other areas of concern. Before Gatekeeper, the Department had to maintain a continuous presence in the border area to deal with the excessive levels of crime and violence.

The completion of the Border Infrastructure System Project in the unfinished areas is required to reverse an increase in San Diego Border Corridor Crimes, recorded in these areas in the years 2001 and 2002. In the first six months of FY 2003 the San Diego Sector experienced a 20 percent increase in the number of illegal aliens apprehended. An ongoing survey of aliens apprehended by the USBP illustrates that nearly 18 percent of all aliens apprehended have serious/felony criminal records. Completion of the Border Infrastructure System is necessary to reverse these trends.

The life threatening work environment of USBP agents and border barrier maintenance personnel will vastly improve upon completion of this project. Treacherous roads that are now being used will be replaced. Three USBP agents and one road maintenance worker have lost their lives while performing their duties on these roads. Assaults on USBP agents have steadily declined commensurate with the amount of secondary fencing constructed in the beginning phases. Assaults on USBP agents have steadily declined from a high of 287 in FY 1996 to 117 in FY 2002. Through the first six months of FY 2003, 54 assaults have occurred. However, assaults on USBP agents have increased in those areas where the Border Infrastructure System is not in place (Imperial Beach and Brown Field Stations). Completion of the Border Infrastructure System is necessary to save lives and ensure a safer work environment for all who work on the border.

Impacts that have occurred during the initial pilot projects in Areas II, III, and IV will be included in the cumulative effects discussion.

1.4 REGULATORY COMPLIANCE STATUS

This EIS has been prepared to satisfy the regulatory requirements mandated by Congress and implemented by various Federal and state entities. These requirements have been put in place to improve and coordinate Federal plans, functions, programs, and resources (NEPA Section 101 [42 USC § 4331]). Compliance with state statutes and other requirements has been maximized to the extent practicable. For instance, even though the Federal government is not required to avoid or mitigate impacts to state listed species, the INS has implemented several measures to do so.

1.4.1 Immigration and Nationality Act

The primary sources of authority granted to officers of the INS are the Immigration and Nationality Act (INA), found in Title 8 of the United States Code (USC) (8 USC), and other statutes relating to the immigration and naturalization of aliens. The secondary sources of authority are administrative regulations implementing those statutes, primarily those found in Title 8 of the Code of Federal Regulations (CFR) (8 CFR Section 287), judicial decisions, and administrative decisions of the Board of Immigration Appeals. Subject to constitutional limitations, INS officers may exercise the authority granted in the INA. Specific statutory provisions related to enforcement authority are found in Sections 287(a), 287(b), 287(c), and 287(e) (8 USC § 1357(a, b, c, e)); Section 235(a) (8 USC § 1225); Sections 274(b) and 274(c) (8 USC.§ 1324(b,c)); Section 274A (8 USC § 1324a); and Section 274C(8 USC § 1324c) of the Act.

In particular, Section 287(a)(3) provides further authority to USBP agents to enter any lands and/or facilities within 25 miles of the international borders, without prior approval of the property owner, in the pursuit of illegal aliens and/or drug traffickers. The USBP attempts to stay on established roads during their apprehension efforts to avoid environmental impacts, increase their own safety, and reduce maintenance costs to vehicles. However, it is within their authority to traverse all lands during apprehension. The Imperial Beach Station, however, has instructed its agents to consider the Tijuana estuary as off-limits. Thus, the USBP must attempt to apprehend the illegal entrants who successfully avoid apprehension at the primary fence when they enter the residential and commercial areas of Imperial Beach, approximately three to five miles north of the border.

1.4.2 1996 Illegal Immigration Reform and Immigrant Responsibility Act

Title 1, Subtitle A, Section 102 of the IIRIRA states, “The Attorney General, in consultation with the Commissioner of Immigration and Naturalization, shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.” More specifically, Subsection 102(b) states that the Attorney General “shall provide for the construction along the 14 miles of the international land border of the United States, starting at the Pacific Ocean and extending eastward, of second and third fences, and roads between the fences”. The same legislation provided the Attorney General with additional authority to contract for or buy any interest in land deemed essential to control and guard the boundaries of the United States. Subsection 102(c) granted authority to the Attorney General to waive provisions of the Endangered Species Act (ESA) of 1973 and the NEPA of 1969, should the Attorney General determine it “necessary to ensure expeditious construction of the barriers and roads under this section.” Waiver authority has not been exercised and this EIS reflects compliance with the provisions of the ESA and the NEPA.

Several persons commented that the mandate under Subsection 102(b) to build roads and fences along the first 14 miles of border could not supercede the provisions of NEPA and ESA that are intended to disclose effects and limit activities that would adversely impact certain species or sensitive environment. The statutory language of Subsection 102(b) directs construction in the coastal zone and makes no exception for wetlands or other sensitive environments. The waiver authority granted to the Attorney General is explicit to all provisions of NEPA and ESA. However, the INS/USBP has continued the preparation of the NEPA documentation as well as consultation with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the ESA. In fact, the Draft EIS was delayed nearly a year in order to provide additional data requested by the USFWS. Furthermore, the USFWS requested the Draft Biological Opinion (BO) and the Draft EIS be submitted concurrently. The INS/USBP has delayed release of the Final EIS pending completion of the BO by the USFWS. This Final EIS describes how this project has proceeded in order to comply with the provisions of NEPA, ESA, and other applicable environmental statutes and regulations.

1.4.3 The National Environmental Policy Act of 1969

The NEPA of 1969, as amended (Public Law [PL] 91-190, 42 USC 4321-4347, January 1, 1970, as amended by PL 94-52, July 3, 1975, PL 94-83, August 9, 1975, and PL 97-258, Section [§] 4[b], September 13, 1982), provides for a congressional declaration of a national environmental policy (Title I) and provides for the establishment of a CEQ (Title II). The overriding purposes of the Act are to: (1) declare a national policy that will encourage productive and enjoyable harmony between man and his environment; (2) promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; (3) enrich the understanding of the ecological systems and natural resources important to the Nation; and (4) establish a CEQ (Purpose Section 2 [42 USC § 4321]).

Title I

Title I of the Act states that Congress, recognizing the profound impact of humankind's activity on the interrelations of all components of the natural environment, declares that it is the continuing policy of the Federal Government, in cooperation with state and local governments, and other concerned public and private organizations, to use all practicable means and measures to foster and promote the general welfare, to create and maintain conditions under which people and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. In order to carry out the policy set forth in the Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources (Section 101 [42 USC § 4331]).

Title I of the Act also directs all agencies of the Federal Government to: (1) utilize a systematic, interdisciplinary approach in planning and in decision-making that may impact the environment; (2) identify and develop methods and procedure to ensure that unquantifiable environmental effects are given appropriate consideration in decision-making; and (3) include in every report on proposals and other Federal actions significantly affecting the quality of the human environment, a detailed statement on: (a) the environmental impact of the proposed action; (b) any adverse effects that cannot be avoided; (c) alternatives to the proposed action; (d) the relationship between local short-term uses and maintenance and enhancement of long-term productivity; and (e) any irreversible and

irretrievable commitments of resources should the proposal be implemented (Section 102 [42 USC § 4332]).

Title II

Title II of the Act creates, in the Executive Office of the President, a CEQ (Section 202 [42 USC § 4342]). It is the duty and function of the CEQ to: (1) assist and advise the President in the preparation of the Environmental Quality Report required by Section 201 [42 USC § 4341] of this title; (2) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere with the achievement of the policy set forth in Title I of this Act, and to compile and submit to the President studies relating to such conditions and trends; (3) review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in Title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy; (4) develop and recommend to the President national policies to foster and promote the improvement of environmental quality; (5) conduct investigations, studies, surveys, research, and analyses relating to environmental quality; (6) document and define changes in the natural environment, and to accumulate necessary data and other information for a continuing analysis of these changes or trends; (7) report at least once each year to the President on the state and condition of the environment; and (8) make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request (Section 204 [42 USC § 4344]).

1.4.4 Council on Environmental Quality Regulations

EO 11991, May 24, 1977, directed the CEQ to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ developed and issued final regulations (40 CFR Parts 1500-1508), thus ensuring that Federal agencies act according to the letter and spirit of the Act. The purpose of the regulations is to tell Federal agencies what they must do to comply with the procedures and achieve the goals of the Act (40 CFR Section 1500.1).

1.4.5 INS Procedures Relating to the Implementation of NEPA

CEQ Regulations (Section 1507.3) provide that each Federal agency shall, as necessary, adopt implementing procedures to supplement the CEQ Regulations. To this end, the Department of Justice established procedures that supplement and implement the provisions of NEPA (28 CFR, Part 61-Procedures for Implementing the National Environmental Policy Act). Appendix C of 28 CFR Part 61 provides the INS procedures relating to the implementation of NEPA. Specifically these procedures apply to efforts associated with leasing, purchasing, design, construction, and maintenance of new and existing INS facilities.

1.4.6 Endangered Species Act

The Endangered Species Act of 1973, as amended (16 USC 1531-1544) and in particular, Sections 7 and 9 (50 CFR 17.11-17.12), require Federal agencies to address the potential impacts of their proposed action on floral and faunal species that have been listed (or proposed for listing) as a threatened or endangered species by the USFWS. Avoidance of impacts to these species should be accomplished, if at all possible. If the proponent (or

USFWS) determines that adverse impacts to listed species are unavoidable, the proponent will enter into formal consultation with the USFWS under Section 7 regulations. This consultation will identify alternatives to the proposed action and conservation measures that can be implemented to reduce or offset the adverse impacts. If it is determined that the proposed action will potentially result in the fatality of a certain number of individuals of the affected species, an incidental take permit will be issued to the proponent under the Section 9 regulations (for Federal agencies).

1.4.7 Additional Regulatory Guidance

Table 1-2 lists additional guidance, statutes, and regulations relevant to the proposal, including any permitting and licensing requirements.

1.5 REPORT ORGANIZATION

This EIS is divided into 10 major sections, including this chapter. Chapter 2.0 will describe the alternatives that were considered that would satisfy the stated purpose and need. The selection process used in determining the best alternative will be explained in Chapter 2.0. Current environmental conditions within the project area and vicinity are presented in Chapter 3.0. The potential impacts, beneficial and adverse, of all alternatives that are being considered are discussed in Chapter 4.0. This chapter also includes a discussion of the cumulative effects that have occurred and that are anticipated as a result of the completion of the proposed Border Infrastructure System project. Chapter 5.0 presents mitigation measures and plans to reduce, eliminate or compensate for any adverse impacts to the human or natural environment. Chapter 6.0 discusses the public involvement measures that have been utilized throughout the preparation of this EIS in soliciting, obtaining, and incorporating input from the general public and resource agencies.

The list of persons responsible for preparing the EIS is presented as Chapter 7.0, while Chapter 8.0 provides a list of the acronyms used throughout this document. References that were used while preparing the EIS, as cited in the text, are presented in Chapter 9.0. An index of pertinent terms discussed throughout the EIS is included as Chapter 10.0, respectively.

As mentioned previously, Appendix A contains a copy of Title 1 of the IIRIRA that documents the Federal mandate to construct the Border Infrastructure System. With the exception of Appendix A, appendices that were presented in the Draft EIS and did not change during the preparation of the final EIS are not duplicated herein. These appendices included letters/correspondence from resource agencies (Appendix B), air emission computations (Appendix D), and wetland delineation forms (Appendix E). Appendix C of the Final EIS contains a list of the state-protected species that are known or presumed to occur within or near the project corridor. In addition, the public comments and correspondence obtained during the scoping process are omitted from the Final EIS; however, comments (and responses to these comments) that were received on the Draft EIS are presented in Appendix F. Other supporting technical documents, as appropriate, are contained in Appendix G. A copy of the BO received from the USWFS for the completion of the Border Infrastructure System can be found in Appendix H. A Consistency Determination, as required by the Coastal Zone Management Act and the California Coastal Act, is included in Appendix I. Examples of conceptual designs proposed for the fences and gate near Border Field State Park are included in Appendix J.

Table 1-2. Summary of Additional Guidance, Statutes, and Relevant Regulations Including Potential Permits or Licensing Requirements

Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance, or Review/Status	Relevant Laws and Regulations
FEDERAL				
Sound/ Noise	Construction and road improvements	United States Environmental Protection Agency (USEPA)	Compliance with surface carrier noise emissions	Noise Control Act of 1972 (42 USC 4901 et seq.), as amended by Quiet Communities of 1978 (P.L. 95-609)
Air	Construction and road improvements	USEPA	Compliance with National Ambient Air Quality Standards (NAAQS) and emission limits and/or reduction measures	Clean Air Act and amendments of 1990 (42 USC 7401-7671q) 40 CFR 50, 52, 93.153(b)
Water	Construction sites with greater than one acre of land disturbed	USEPA	Section 402(b) National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges for Construction Activities-Storm Water Pollution Prevention Plan (SWPPP)	Clean Water Act of 1977 (33 USC 1342) 40 CFR 122
	Construction in or modification of floodplains	Water Resources Council, Federal Emergency Management Agency (FEMA), CEQ	Compliance	Executive Order 11988 (Floodplain Management), as amended by Executive Order 12608. 3 CFR, 1977 Comp. p. 117
	Construction in or modification of wetlands	U.S. Army Corps of Engineers (USACE) and U.S. Fish and Wildlife Service (USFWS)	Compliance	Executive Order 11990 (Protection of Wetlands), as amended by Executive Order 12608. 3 CFR, 1977 Comp. p. 121
	Potential discharge into waters of the state (including wetlands and washes)	USACE (and state)	Section 401 Permit	Clean Water Act of 1977 (33 USC 1341 et seq.) 40 CFR 121
	Discharge of dredge or fill material to a watercourse	USACE	Section 404 Permit (Individual or nationwide)	Clean Water Act of 1977 (33 USC 1344) 40 CFR 230
	Consistency with approved state coastal management programs	USACE	Compliance	Coastal Zone Management Act of 1972 (16 USC 1456[c]) Section 307
Soils	Current operation involving hazardous waste and/or remediation of contamination site	USEPA	Proper management, and in some cases, permit for remediation	Resource Conservation and Recovery Act of 1976 (42 USC 6901-6992k), as amended by Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616; 98 Stat. 3221)

(continued)

Table 1-2, continued. Summary of Additional Guidance, Statutes, and Relevant Regulations Including Potential Permits or Licensing Requirements

Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance, or Review/Status	Relevant Laws and Regulations
FEDERAL (cont.)				
Soils (cont.)	Release or threatened release of a hazardous substance	USEPA	Development of emergency response plans, notification, and cleanup	Comprehensive, Environmental Response, Compensation, Liability Act of 1980 (42 USC 9601-9675), as amended by Emergency Planning and Community Right-To-Know-Act of 1986 (42 USC 11001 et seq.)
	Prime and unique farmlands	Natural Resource Conservation Service (NRCS)	NRCS determination via Form AD-1006	Farmland Protection Policy Act of 1981 (7 USC 4201 et seq.) 7 CFR 657-658
Natural Re-sources	Identification of threatened and endangered species and their habitats	USFWS	Compliance by lead agency and/or consultation to assess impacts and, if necessary, develop mitigation measures	Endangered Species Act of 1973, as amended (16 USC 1531-1544) Sections 7 and 9 50 CFR 17.11-17.12
	Protection of migratory birds	USFWS	Compliance by lead agency and/or consultation to assess impacts and, if necessary, develop mitigation measures	Migratory Bird Treaty Act of 1918 (16 USC 703-712) 50 CFR Ch. 1
	Protection of bald and golden eagles	USFWS	Compliance by lead agency and/or consultation to assess impacts and, if necessary, obtain permit	Bald and Golden Eagle Act of 1940, as amended (16 USC 688-688d) 50 CFR 22.3
	Endangered species management planning	DoD	Compliance with DoD planning standards for endangered species management	AR 200-1 (Environmental Protection and Enhancement) AR 200-3 (Natural Resources - Land, Forest, and Wildlife Management)
Health and Safety	Health and safety standards	Occupational Safety and Health Administration (OSHA)	Compliance with guidelines including Material Safety Data Sheets	Occupational Safety and Health Act of 1970 (29 USC 651-678) 29 CFR 1975
Cultural/ Archa-eological	Disturbance of historic properties	Federal lead agency, State Historic Preservation Officer, Advisory Council on Historic Preservation	Section 106 Consultation	National Historic Preservation Act of 1966 (16 USC 470 et seq.), as amended 36 CFR 800 Army Regulation 200-4 Cultural Resources Management Presidential Memorandum regarding government to Government Relations (April 29, 1994) Executive Order 13007 – Sacred Sites Native American Graves Protection and Repatriation Act (43 CFR Part 10)

(continued)

Table 1-2, continued. Summary of Additional Guidance, Statutes, and Relevant Regulations Including Potential Permits or Licensing Requirements

Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance, or Review/Status	Relevant Laws and Regulations
FEDERAL (cont.)				
Cultural/ Archae-ological (cont.)	Investigation and excavation of cultural resources	Affected land-managing agency	Permits to survey and excavate/ remove archeological resources on Federal lands; Native American tribes with interests in resources must be consulted prior to issue of permits	Archeological Resources Protection Act of 1979 (16 USC 470aa-470ii) 43 CFR 7
Social/ Eco-nomic	Disproportionately high and adverse human health or environmental effects on minority and low-income populations	USEPA	Compliance	Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) of 1994
STATE				
Air	Construction or modification of air contaminant source	California Environmental Protection Agency: San Diego Air Pollution Control District	Compliance with state ambient air quality standards (SAAQS) and General Conformity *de minimus* thresholds; Compliance with State Implementation Plan for emissions exceeding *de minimus* levels	California Clean Air Act (1988 California Statue Chapter 1568) Health and Safety Code 39000-44394
Water	Construction or modification of a water discharge source	California Regional Water Quality Control Board - San Diego	State 401 Water Quality Certification	Porter-Colgne Water Quality Control Act of 1970 (Water Code 13000-14958)
	Reporting and cleanup requirements for hazardous substances and oil/petroleum spills	Office of Emergency Services and California Regional Water Quality Control Board	Compliance	Porter-Colgne Act (Water Code 13271, 13272) Health and Safety Code 5411.5
	Construction or modification of land, structures, or vegetation in the coastal zone	California Coastal Commission	Compliance	California Coastal Act of 1976, as amended (Pub. Res. Code 30000-30900) 14 Coastal Commission's Regulations 13001-13666.4